

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5751 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MADHUBEN D PATEL

Versus

VALLABHNAGAR CO-OP. HOUSING SOC. LTD.

Appearance:

MR GR UDHWANI for the Petitioner

MR RAVINDRA SHAH for the Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/09/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner filed a civil suit regarding the dispute in between herself and the respondent Society in connection with the land of Plot No.99/C including the portion of bungalow. The petitioner has raised a boundary wall and the respondent Society has made a grievance that while raising the boundary wall, the petitioner has made encroachment on the Society land. The Society has given

the notice for demolition of the boundary wall which cause gave rise to the petitioner to approach to the Lavad court. In the Lavad suit, the petitioner prayed for the temporary injunction which has been granted and the Lavad Court has directed the parties to maintain the status-quo regarding the boundary wall. The respondent Society preferred the revision application against the order of the Lavad court and the Gujarat State Cooperative Tribunal under its order dated 15-10-1985 has modified that order.

2. The petitioner filed this petition before this Court and initially on 23-10-1985 the order directing to maintain the status-quo in the meantime was passed. On 30-10-1985, rules was issued and interim stay of the operation of the judgment of the Cooperative Tribunal was granted. That interim relief continues meaning thereby the status-quo as ordered by the Lavad court regarding the boundary wall continues. Both the counsel for the parties are unable to say that ultimately what has been decided in the Lavad suit inter parties.

3. This Special Civil Application pertains to the grant of interim relief and I do not consider it appropriate to discontinue the status-quo which has to be maintained during the pendency of the suit after such a long spell of time and more so, when this Court has stayed the operation of the order of the Cooperative Tribunal. The possibility of the disposal of the suit cannot be excluded also which is another reason not to disturb this status-quo. The apprehension of the counsel for the respondent is that in case this Special Civil Application is disposed of and the order of the status-quo is maintained then even if the suit is decided, the petitioner will take the benefit of it and will not demolish the boundary wall. Another apprehension is that in case the suit is pending and this order is passed by this Court then the Lavad court may decide the matter in favour of the petitioner. Both the apprehensions of the counsel for the respondent are without any foundation and basis. The Lavad court has passed the order of grant of temporary injunction and it will continue till the suit is decided. After decision of the suit, the interim relief granted will be merged in the final order and the parties are bound by the final decision. What this court is doing, maintaining the status-quo during the pendency of the suit and in case, the suit is decided then this order will not be of any help to the petitioner and she has to abide by the decision given by the Lavad court in the suit. If the suit is pending then too maintaining of the status-quo

will have no effect on the merits of the case. It is only the status-quo till the suit is decided on merits and ultimately the rights of the parties shall be in accordance with the final decision given in the Lavad Suit.

4. In the result, this Special Civil Application is disposed of with the direction that in case the Lavad suit is not disposed of so far then the status-quo as ordered by way of the interim relief by the Trial court shall continue, but in case the Lavad suit is disposed of then this order will have no effect and the rights of the parties shall be in accordance with the final decision given in the Lavad suit. Rule stands discharged accordingly with no order as to costs.

zgs/-